

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

YOUNG AMERICA’S FOUNDATION;
BINGHAMTON UNIVERSITY
COLLEGE REPUBLICANS; and REIN
BEY, in her official capacity as President of the
College Republicans of Binghamton
University,

Plaintiffs,

v.

HARVEY STENGER, President of
SUNY-Binghamton, in his official and
individual capacities; BRIAN ROSE, Vice
President for Student Affairs of SUNY-
Binghamton, in his official and individual
capacities; JOHN PELLETIER, Chief of
SUNY-Binghamton UPD, in his official
and individual capacities; and STUDENT
ASSOCIATION OF BINGHAMTON
UNIVERSITY,

Defendants.

**STATEMENT OF MATERIAL FACTS
IN SUPPORT OF DEFENDANT
PELLETIER’S MOTION FOR
SUMMARY JUDGMENT PURSUANT
TO FRCP 56**

Case No.: 3:20-cv-822-LEK/TWD

Pursuant to Local Rule 56.1, defendant John Pelletier, Chief of SUNY-Binghamton UPD, in his official and individual capacities, submits this Statement of Material Facts in support of his motion for summary judgment.

Background Information

1. Defendant John Pelletier was the Chief of Binghamton University’s Police Department (“University PD”) from December 2018 until his retirement in July 2022. (Ex. 1, Pelletier depo at p. 14.)

2. Defendant Harvey Stenger has been the President of Binghamton University since 2012. (Ex. 5, Stenger depo at p. 14.)

3. Defendant Brian Rose has been the Vice President for Student Affairs at Binghamton University since 2008. (Ex. 4, Rose depo at p. 10.)

4. The University PD has the authority to make arrests and charge individuals with New York State crimes whereas the University's student conduct office handles student discipline for conduct issues related to University rules. (Ex. 5, Stenger depo at p. 26. Ex. 4, Rose depo at p. 11. Ex. 5, Stenger depo at p. 22-23, 28, 100-101. Ex. 6, Faughnan depo at p. 22-23, 123-124.)

5. Once an arrest was made, Pelletier did not have the ability to decide whether or not prosecution was pursued as the District Attorney's office made the decisions on prosecution. (Ex. 1, Pelletier depo at p. 70.)

6. Defendant Student Association of Binghamton University, Inc. ("Student Association") is a separately incorporated entity with which student organizations register to be a chartered organization on campus and this corporation handles, among other things, disciplining student organizations for organizational behavior. (Ex. 10, Johnson depo at p. 11, 21-22, 32, 42-43, 65-66, 75-81, 84-85, 100. Ex. 42, SA2 depo ex. Ex. 47, SA4.)

7. The University does not make decisions on disciplining student organizations. (Ex. 4, Rose depo at p. 166. Ex. 5, Stenger depo at p. 128. Ex. 10, Johnson depo at p. 21-22, 72-73, 81, 108-109, 112, 125, 129, 168.)

8. The Chief of Police serves at the pleasure of the President. (Ex. 1, Pelletier depo at p. 45, 255.)

9. In the chain of command in 2019, Chief Pelletier reported to the University's Associate Vice President of Emergency Services, Timothy Faughnan. (Ex. 1, Pelletier depo at p. 15-16, 48, 65-67. Ex. 2, Gallagher depo at p. 26. Ex. 6, Faughnan depo at p. 9, 11-13.)

10. Section 535.3(i) of 8 NYCRR 535.3, applicable to SUNY universities including Binghamton University, prohibited the deliberate disruption of meetings and the deliberate interference with the freedom of any person to express their views, including invited speakers. (Ex. 4, Rose depo at p. 137-140. Ex. 39, BR14 depo ex.)

11. Under University PD General Order 342(f)(3), Civil Demonstration/Disorder, there was a policy in effect as of November 2019 that “it is the responsibility of the University Police Department to preserve the peace while protecting the rights of demonstrators to assemble peacefully and exercise free speech. Members shall make reasonable efforts to employ non-arrest methods of crowd control, but as required, shall make arrests for violations of law.” (Ex. 35, F1 depo ex.)

12. Under this General Order, University PD officers were to make reasonable efforts to use non-arrest methods of crowd control, such as standing between groups that had differences of opinion, and officers were to use their discretion to make arrests for violations of law. (Ex. 1, Pelletier depo at p. 28-33, 40-44. Ex 3, Faulkner depo at p. 20-24. Ex. 35, F1 depo ex.)

13. In 2019, the University PD had approximately 43-45 sworn law enforcement officers, consisting of about 31-33 patrol officers, five lieutenants, three investigators, two deputy chiefs, an assistant chief, and the chief, plus staff with no police powers including ten security services assistants, nine dispatchers, a dispatch supervisor, and a secretary. (Ex. 1, Pelletier depo at p. 44-46, 53-54. Ex. 6, Faughnan depo at p. 43-44.)

14. University PD is as large as or larger than various other law enforcement agencies in the area. (Ex. 6, Faughnan depo at p. 42.)

15. Thus, although University PD has memoranda of understanding with other law enforcement agencies for mutual aid, University PD is a large enough department that it handles

almost all police matters itself. (Ex. 1, Pelletier depo at p. 50-51, Ex. 6, Faughnan depo at p. 41-43, 196-198.)

16. The rare circumstances when other agencies have assisted University PD on campus have been two homicides; assistance with operating a flood relief shelter for thousands of people at the University's event center; and a large high profile 50 Cent concert. (Ex. 6, Faughnan depo at p. 41-43, 196-198.)

17. University PD had never requested another agency to assist with a protest or disorderly conduct before the Tabling and Laffer Events. (Ex. 6, Faughnan depo at p. 198.)

18. University PD had worked many political events on campus, including protests, rallies, political speaking events, and visits by the governor and President, and none resulted in arrests, evacuating anyone, cancellation, or the speaker being unable to continue speaking. (Ex. 1, Pelletier depo at p. 73-77. Ex. 3, Faulkner depo at p. 49-55.)

19. Before the Tabling and Laffer Events, Pelletier and the University PD were familiar with the College Progressives, a chartered student group at Binghamton University, because they conducted a lot of protests on campus. (Ex. 1, Pelletier depo at p. 108-109. Ex. 2, Gallagher Ex. 75-76. Ex. JP2 depo ex.)

20. University PD had arrested the College Progressive's vice president shortly before the Tabling and Laffer Events for tearing down pro-life signs on a campus bus, and then she publicly accused University PD of being racist and arresting her because of the color of her skin. (Ex. 1, Pelletier depo at p. 109-110, 243. Ex. 22, JP2 depo ex.)

21. College Republicans, also a chartered student group at Binghamton University, engaged in speech on campus many times before the Tabling and Laffer Events and neither the University PD nor any other University personnel impeded their speech, including meetings with

guest speakers, speakers about fracking, a fireside debate in 2017, a 2018 or 2019 event called Constitution Day, the annual U-Fest, Liberty Weekend in April 2019, and an October 2019 event called The Case Against Socialism where the College Republicans hosted various speakers in a lecture hall. (Ex. 2, Gallagher depo at p. 47. Ex. 11, Scagnelli depo at p. 34, 51-53, 56, 62-63, 110-112, 114. Ex. 12, Kestecher depo at p. 38-39, 47-48, 69. Ex. 13, Restuccia depo at p. 33-36, 54-58, 65, 68-69, 72, 166-169, 203, 301. Ex. 14, Haynes depo at p. 33, 59, 85-86. Ex. 15, Lizak depo at p. 27-28, 44, 49-52, 56, 59-60, 115. Ex. 16, Badalamenti depo at p. 50-52, 155. Ex. 17, Bey depo at p. 24-26, 35-39, 49-51. Ex. 18, Nelson depo at p. 35-36, 44, 79. Ex. 19, Blakeslee depo at p. 27, 31, 34-35, 62-63, 67-69, 75-76.)

22. College Republicans have continued to engage in speech since the Laffer Event, including holding elections of their officers in December 2019 and subsequent elections, tabling when US Congressman Tom Reed came to campus in January 2020, holding meetings during the Spring 2020 semester, participating in U-Fest, hosting local politicians as guest speakers at meetings, hosting guest speakers in 2022, having John Restuccia as a guest speaker at a meeting in 2022, holding weekly meetings for which they posted flyers, and having bake sale tabling events in 2023 to raise money for a speaker. (Ex. 5, Stenger depo at p. 167. Ex. 11, Scagnelli depo at p. 40-43. Ex. 12, Kestecher depo at p. 180-183. Ex. 13, Restuccia depo at p. 73-75, 336, 351. Ex. 14, Haynes depo at p. 37-39, 216-217. Ex. 15, Lizak depo at p. 53-55, 61-68. Ex. 16, Badalamenti depo at p. 27, 50-51. Ex. 17, Bey depo at p. 19, 22-23, 42-46, 52-54, 166-167. Ex. 18, Nelson depo at p. 38, 147. Ex. 19, Blakeslee depo at p. 32-33.)

Plaintiffs Arrange the Laffer Event

23. In July 2019, plaintiffs Young America's Foundation ("YAF") and College Republicans started discussing co-sponsoring a lecture on campus and by August 2019 they settled on Arthur Laffer. (Ex. 9, Kannapan depo at p. 43, 48, 50. Ex. 11, Scagnelli depo at p. 88-97. Ex. 13, Restuccia depo at p. 95-99, 104. Ex. 49, depo ex. 3. Ex. 14, Haynes depo at p. 81.)

24. Arthur Laffer was an economic advisor for Presidents Reagan and Trump, and Trump had just given him a Presidential Medal of Freedom in June 2019. (Ex. 8, Butler depo at p. 12. Ex. 31, G2 depo ex. Ex. 36, F3 depo ex.)

25. YAF has hired Laffer to give approximately five to ten speeches per year over the course of many years. (Ex. 7, Laffer depo at p. 16-17. Ex. 8, Butler depo at p. 18, 21. Ex. 9, Kannappan depo at p. 24-25.)

26. Binghamton University gave approval to the College Republicans to host the lecture, which was titled "Trump, Tariffs and Trade Wars." (Ex. 11, Scagnelli depo at p. 98-99. Ex. 31, G2. Ex. 50, depo ex. 11.)

27. From August 2019 through October 2019, plaintiffs scheduled and rescheduled a date for Laffer's lecture several times, ultimately scheduling it for November 18, 2019. (Ex. 11, Scagnelli depo at p. 88-97. Ex. 13, Restuccia depo at p. 108-109, 114-129. Ex. 49, depo ex. 3.)

28. Also from August 2019 through October 2019, per the Binghamton University rules requiring that rooms be reserved for use, the College Republicans requested and received classroom reservations from the University for the Laffer Event and the room reservations changed as the date changed. (Ex. 11, Scagnelli depo at p. 88-97. Ex. 13, Restuccia depo at p. 108-109, 114-129. Ex. 14, Haynes depo at p. 82-83. Ex. 15, Lizak depo at p. 99. Ex. 16, Badalamenti depo

at p. 25-26, 35. Ex. 17, Bey depo at p. 25, 89-90. Ex. 20, Yarosh depo at p. 54. Ex. 49, depo ex. 3.)

29. In approximately early October 2019, College Republicans posted signs around campus to promote the Laffer Event, and no one prevented them from posting the signs. (Ex. 14, Haynes depo at p. 52-53. Ex. 15, Lizak depo at p. 56.)

The Tabling Event on November 14, 2019

30. Per Binghamton University's procedures for tabling on campus, if a group wished to table on the Spine where the Tabling Event occurred, the group was required to make a reservation for the space. (Ex. 4, Rose depo at p. 163. Ex. 10, Johnson depo at p. 48-50, 115, 126-129. Ex. 11, Scagnelli depo at p. 124. Ex. 12, Kestecher depo at p. 199-201. Ex. 13, Restuccia depo at p. 66-68, 365. Ex. 20, Yarosh depo at p. 132-133. Ex. 43, SA3 depo ex. and Kestecher depo ex 1. Ex. 44, depo ex. 5. Ex. 45, SA5 depo ex.)

31. The Spine was (and is) an outdoor walkway that runs between buildings on campus. (Ex. 3, Faulkner depo at p. 57-58. Ex. 11, Scagnelli depo at p. 124. Ex. 12, Kestecher depo at p. 74-75. Ex. 14, Haynes depo at p. 95. Ex. 16, Badalamenti depo at p. 86. Ex. 19, Blakeslee depo at p. 70. Ex. 43, SA3 depo ex and Kestecher depo ex 1.)

32. The Spine was (and is) in high demand for tabling events due to high pedestrian traffic and the University required (and requires) that space be reserved. (Ex. 11, Scagnelli depo at p. 124. Ex. 13, Restuccia depo at p. 177-178. Ex. 14, Haynes depo at p. 95. Ex. 43, SA3 depo ex. and Kestecher depo ex 1. Ex. 44, depo ex. 5. Ex. 45, SA5 depo ex.)

33. Tabling is when a person or group sets up table(s) to promote something, such as information, a bake sale, item sale, or ticket sale. (Ex. 10, Johnson depo at p. 49-50. Ex. 43, SA3 depo ex. and Kestecher depo ex 1. Ex. 44, depo ex. 5.)

34. Groups and individuals were (and are) permitted to freely associate on the Spine without a reservation so long as they did not have physical equipment, such as a table, for their activity. (Ex. 3, Faulkner depo at p. 73, 82-83. Ex. 10, Johnson depo at p. 66. Ex. 11, Scagnelli depo at p. 199-200. Ex. 23, JP3 and F2 depo exs. Ex. 43, SA3 depo ex. and Kestecher depo ex 1.)

35. College Republicans knew that they were supposed to make a reservation to do the tabling but on November 14, 2019 they intentionally tabled on the Spine without a reservation because they felt that the reservation rule was a free speech violation. (Ex. 10, Johnson depo at p. 54-58, 62, 64-67, 70-72, 84-85, 89-90, 115. Ex. 11, Scagnelli depo at p. 126, 155, 198-199. Ex. 14, Haynes depo at p. 104-106, 154, 222-228. Ex. 16, Badalamenti depo at p. 66-68, 89, 154. Ex. 43, SA3 depo ex. and Kestecher depo ex 1. Ex. 46, depo ex 17. Ex. 47, SA4 depo ex.)

36. College Republicans tabled with Turning Point USA, which was a group that was not chartered by the Student Association or otherwise recognized by the University. (Ex. 11, Scagnelli depo at p. 155. Ex. 12, Kestecher depo at p. 29-30, 32-33, 79-88, 105-106, 109. Ex. 13, Restuccia depo at p. 209-210, 214-215, 310. Ex. 14, Haynes depo at p. 98-100, 115. Ex. 15, Lizak depo at p. 41-42, 166. Ex. 16, Badalamenti depo at p. 90, 105.)

37. Another group, the Hillel Jewish Student Union, had reserved the space to hold a November 14, 2019 tabling event on the Spine, but they were unable to table because the College Republicans and Turning Point USA were there tabling. (Ex. 10, Johnson depo at p. 62. Ex. 20, Yarosh depo at p. 133, 137. Ex. 45, SA5 depo ex.)

38. On the morning of November 14, 2019, College Republicans and Turning Point USA set up two tables next to each other and tabled for hours without incident. (Ex. 11, Scagnelli depo at p. 141-142. Ex. 12, Kestecher depo at p. 78-83, 90. Ex. 13, Restuccia depo at p. 217. Ex. 14, Haynes depo at p. 115, 117.)

39. Lacey Kestecher, who was both a College Republican and a Turning Point USA member, simultaneously worked both tables. (Ex. 11, Scagnelli depo at p. 149. Ex. 12, Kestecher depo at p. 25, 30, 56, 79-81, 85, 88. Ex. 13, Restuccia depo at p. 189-191. Ex. 14, Haynes depo at p. 118.)

40. Jon Lizak, who was a College Republican and a Turning Point USA supporter, also worked both tables. (Ex. 12, Kestecher depo at p. 33, 105-106. Ex. 13, Restuccia depo at p. 189-191. Ex. 14, Haynes depo at p. 122. Ex. 15, Lizak depo at p. 130, 134. Ex. 17, Bey depo at p. 112.)

41. The tabling included displaying Laffer Event flyers; a life size cardboard cutout of Donald Trump; hot chocolate; a poster stating “I’M PRO CHOICE. PICK YOUR GUN.” with pictures of three guns and their descriptions of Glock 27, AR-15, and 12 Gauge; a Coexist sign but with guns instead of other symbols; and a poster of a rainbow shaped like an AR-15 rifle. (Ex. 11, Scagnelli depo at p. 131-132, 137-139. Ex. 12, Kestecher depo at p. 80-81, 88-90. Ex. 13, Restuccia depo at p. 179-180, 195-196, 244-247. Ex. 14, Haynes depo at p. 116, 119-121, 123, 125, 151-152. Ex. 15, Lizak depo at p. 129, 134-136. Ex. 16, Badalamenti depo at p. 95-96. Ex. 46, depo ex. 17.)

42. After several hours of tabling, passersby began to protest. (Ex. 14, Haynes depo at p. 127-129. Ex. 51, video at 1:41PM.)

43. Dispatch sent University PD officers to the scene of the Tabling Event in response to calls that there was a disturbance between two groups of people on the Spine. (Ex. 1, Pelletier depo at p. 82. Ex. 3, Faulkner depo at p. 57-59.)

44. Approximately five to eight officers responded to the scene. (Ex. 1, Pelletier depo at p. 84-85. Ex. 12, Kestecher depo at p. 95, 102. Ex. 14, Haynes depo at p. 137. Ex. 15, Lizak depo at p. 145.)

45. Volatility escalated as the crowd of protestors grew from a few people to approximately 200. (Doc. No. 262, AC at ¶ 49. Ex. 3, Faulkner depo at p. 62, 64-65. Ex. 12, Kestecher depo at p. 93, 102. Ex. 14, Haynes depo at p. 128-130, 137-138. Ex. 15, Lizak depo at p. 144-145. Ex. 16, Badalamenti depo at p. 99-100, 110, 113. Ex. 22, JP2 depo ex. Ex. 41, depo ex. 10. Ex. 51, video at 1:41PM-2:50PM.)

46. College Republicans and Turning Point USA's tabling group consisted of approximately four or five people. (Ex. 11, Scagnelli depo at p. 131. Ex. 12, Kestecher depo at p. 79-88. Ex. 13, Restuccia depo at p. 88. Ex. 22, JP2 depo ex.)

47. Protestors were aggressively yelling, agitated, and there had been a high school shooting that morning in California so protestors were saying that the tablers were being insensitive with their gun imagery posters and promotion. (Ex. 3, Faulkner depo at p. 62-66. Ex. 11, Scagnelli depo at p. 157. Ex. 14, Haynes depo at p. 120, 130-131, 151. Ex. 38, BR1 depo ex.)

48. A male protestor ripped College Republican Kestecher's red "Trump 2020" hat off her head and threw it into the crowd, and protestors ripped up the tabling group's posters. (Ex. 12, Kestecher depo at p. 88, 96, 114-115. Ex. 21, JP1 depo ex. Ex. 23, JP3 and F2 depo exs. Ex. 51, video at 2:41:58-2:42:04. Doc. No. 262, AC at ¶ 49-50.)

49. The College Republicans felt that they were in danger. (Ex. 12, Kestecher depo at p. 95-96. Ex. 14, Haynes depo at p. 139, 143. Ex. 15, Lizak depo at p. 154.)

50. Given the College Republicans' concern for their safety, a College Republican asked the police if the police would be able to keep them safe in this situation and the police said that they were trying. (Ex. 14, Haynes depo at p. 138.)

51. Binghamton University staff and Student Association personnel asked the tablers to relocate their tabling because they did not reserve the space to table. (Ex. 3, Faulkner depo at p. 72-74, 83. Ex. 10, Johnson depo at p. 64-67, 86-87. Ex. 12, Kestecher depo at p. 96-97, 121-124, 202-203. Ex. 16, Badalamenti depo at p. 107-108.)

52. The tabling group did not relocate their tabling. (Ex. 10, Johnson depo at p. 66. Ex. 12, Kestecher depo at p. 124. Ex. 16, Badalamenti depo at p. 108.)

53. College Republicans were permitted to be on the Spine and engage in speech, they just were not permitted to put up tables without a reservation. (Ex. 3, Faulkner depo at p. 73, 82-83. Ex. 10, Johnson depo at p. 66. Ex. 23, F2 depo ex.)

54. The police gave verbal warnings to the protestors but would not have been able to disperse the large crowd without using physical force. (Ex. 3, Faulkner depo at p. 67-68, 70-71, 79-80.)

55. The police also determined that under the circumstances, they could not safely arrest protestors at the scene because of the likelihood that an arrest would further escalate the protestors' conduct. (Ex. 3, Faulkner depo at p. 70-71.)

56. The police officers got between the two sides, protected both sides, prevented a physical conflict, prevented anyone from being injured, and did not have to use physical force, all while the protestors were yelling anti-police chants such as "no justice no peace, racist BU police,"

“who are you protecting,” and “fuck the police” and the tabling group was trying to maneuver closer to the disruptors to take videos. (Ex. 1, Pelletier depo at p. 102. Ex. 3, Faulkner depo at p. 62-63, 86-87. Ex. 4, Rose depo at p. 31. Ex. 5 depo at p. 46, 52. Ex. 10, Johnson depo at p. 59-61. Ex. 12, Kestecher depo at p. 95. Ex. 13, Restuccia depo at p. 223-225. Ex. 16, Badalamenti depo at p. 112. Ex. 20, Yarosh depo at p. 27, 35. Ex. 22, JP2 depo ex. Ex. 23, JP3 depo ex. Ex. 31, G2 depo ex. Ex. 40, HS1 depo ex. Ex. 51, video at 2:10PM-2:50PM.)

57. Protestors were chanting at police because they viewed University PD’s actions as protecting the tabling group. (Ex. 38, BR1 depo ex.)

58. As one observer noted, “TPUSA’s unauthorized table was guarded by UPD for more than an hour.” (Ex. 25, G6, F5, BR2, and RY2 depo exs. at bates 001274 and 001099.)

59. Due to the hundreds of protestors far outnumbering the officers, the protestors becoming increasingly agitated, and the potential for violence, an officer informed someone from the tabling group that if the crowd turned physically violent against those tabling, the officers did not know if they would be able to protect the tabling group’s safety for long. (Ex. 1, Pelletier depo at p. 102-103, 105-106, 111-112, 135. Ex. 3, Faulkner depo at p. 66-69, 76-78. Ex. 10, Johnson depo at p. 59-60. Ex. 20, Yarosh depo at p. 27-28. Ex. 23, JP3 depo ex. at bates 000012.)

60. Officers told the tabling group that for their safety, it would be best to leave to protect them. (Ex. 3, Faulkner depo at p. 75. Ex. 14, Haynes depo at p. 148.)

61. Eventually the tabling group left. (Ex. 3, Faulkner depo at p. 74-77. Ex. 12, Kestecher depo at p. 97-99. Ex. 14, Haynes depo at p. 141-142. Ex. 16, Badalamenti depo at p. 102. Ex. 20, Yarosh depo at p. 27-28.)

62. The College Republicans left well after they had already accomplished their goal of promoting the Laffer Event and handing out about 150 flyers. In fact, College Republicans

emailed YAF at 2:10 p.m., before the protesting turned into a volatile disturbance, to inform YAF that the College Republicans ended the tabling, stating “we just ended tabling. We were getting protested by 30 people from progressives but we handed out 150 flyers.” A half hour later College Republicans emailed YAF again with the update that “over 100 people showed up.” (Ex. 13, Restuccia depo at p. 186, 207, 238-241. Ex. 15, Lizak depo at p. 128. Ex. 41, depo ex. 10.)

63. Pelletier was not on the Spine during the Tabling Event. (Ex. 1, Pelletier depo at p. 82-83.)

64. After the Tabling Event, Pelletier learned that the individuals who protested the College Republicans’ and Turning Point USA’s tabling had ripped up the group’s posters and that some individuals were labeling the tabling group’s speech as hate speech in an attempt to justify de-platforming Laffer. Pelletier did not find it to be hate speech and found that it would go against free speech to try to de-platform Laffer. (Ex. 1, Pelletier depo at p. 93-94. Ex. 21, JP1 depo ex.)

65. Although police determined that it was unsafe to make any on-scene arrests of those harassing the College Republicans, after the Tabling Event charges were filed against two protestors per College Republicans Kestecher’s and Lizak’s request. (Ex. 1, Pelletier depo at p. 97-98, 136. Ex. 2, Gallagher depo at p. 42-43. Ex. 3, Faulkner depo at p. 80. Ex. 12, Kestecher depo at p. 110-119. Ex. 14. Lizak depo at p. 151-154, 162-163. Ex. 23, JP3 depo ex.)

66. On November 14, 2019, after the Tabling Event, the Student Association, which was a corporation that was not directed, controlled, or supervised by Pelletier or anyone else in the University PD or the University, revoked the College Republicans’ reservation privileges until the Fall 2020 semester for tabling without a reservation. (Ex. 4, Rose depo at p. 92-94. Ex. 10, Johnson depo at p. 11, 72-73, 86-88, 94, 118, 175. Ex. 13, Restuccia depo at p. 47, 340-341. Ex. 15, Lizak depo at p. 235. Ex. 18, Nelson depo at p. 150. Ex. 47, SA4 depo ex. Ex. 48, SA7 depo ex.)

67. The Student Association revoked the College Republicans' reservation privileges before the Laffer Event, thus per the Student Association's policy, the Laffer Event should have been canceled because the College Republicans no longer had room reservation privileges, but Binghamton University did not cancel the Laffer Event. (Ex. 10, Johnson depo at p. 90-92, 124. Ex. 16, Badalamenti depo at p. 168-173.)

Preparations for the Laffer Event

68. As of November 11, 2019, College Republicans and Laffer did not have security concerns for the Laffer Event and so University PD planned to assign one plain clothes officer to attend. (Ex. 37, F4 depo ex.)

69. College Republicans were planning for about 150 people to attend the Laffer event, which University PD did not consider a large event. (Ex. 3, Faulkner depo at p. 91-93. Ex. 37, F4 depo ex.)

70. On November 15, 2019, the day after the Tabling Event, University PD began seeing social media postings. These postings indicated the potential for College Progressives protesting the Laffer Event. (Ex. 1, Pelletier depo at p. 142-143. Ex. 4, Rose depo at p. 34-35.)

71. Also on November 15, 2019, YAF decided to hire two private security officers from Pinkerton to protect Laffer throughout the day on November 18, 2019. (Ex. 2, Gallagher depo at p. 57-59. Ex. 8, Butler depo at p. 44, 51, 58-59. Ex. 9, Kannappan depo at p. 96-98, 101. Ex. 32, G4 depo ex.)

72. Laffer had never used Pinkerton officers before, nor had he had private security for any events he did for YAF. (Ex. 7, Laffer depo at p. 38. Ex. 8, Butler depo at p. 60.)

73. Laffer had been giving lectures his entire life, including at schools and around the world, and there had never been a protest at any of them. (Ex. 7, Laffer depo at p. 47. Ex. 8, Butler depo at p. 11-12, 24, 39-40.)

74. On November 17, 2019, YAF forwarded an email to University PD to alert the police about the Progressives Leaders of Tomorrow (“PLOT”) posting messages on Facebook “out rightly calling on people to be violent” at the Laffer Event and equating YAF to Nazis. (Ex. 1, Pelletier depo at p. 150-151. Ex. 2, Gallagher depo at p. 63-69, 81. Ex. 9, Kannappan depo at p. 105-108. Ex. 24, G5 depo ex.)

75. PLOT was a local Binghamton area group, not a Binghamton University student organization, that protested in Broome County and had a history of arrests by other law enforcement agencies. (Ex. 1, Pelletier depo at p. 144-148. Ex. 4, Rose depo at p. 37-38. Ex. 9, Kannappan depo at p. 26. Ex. 16, Badalamenti depo at p. 42.)

76. On the morning of the November 18, 2019 Laffer Event, the University’s Senior Director of Media and Public Relations forwarded to University PD, Brian Rose, and others an email from College Progressives and a post ostensibly written on behalf of College Progressives, PLOT, Frances Beal Society, and Truth Pharm that promoted their intention to disrupt the Laffer Event by “hold[ing] a speak-out against the white supremacy that these groups and the University Police Department continue to uphold and perpetuate.” (Ex. 1, Pelletier depo at p. 151-156. Ex. 2, Gallagher depo at p. 70-76. Ex. 3, Faulkner depo at p. 105-108. Ex. 4, Rose depo at p. 35-37. Ex. 6, Faughnan depo at p. 75-76. Ex. 20, Yarosh depo at p. 41-46, 49. Ex. 25, G6, F5, BR2, and RY2 depo exs.)

77. Frances Beal Society and Truth Pharm were also groups known for protesting. (Ex. 1, Pelletier depo at p. 144-145. Ex. 3, Faulkner depo at p. 113. Ex. 10, Johnson depo at p. 137.)

78. Also on November 18, 2019, Pelletier, University PD, and University administrators discussed the Laffer Event, including where it was being held, the emails and social media posts, the seriousness of the threat to the Laffer Event, the need to be proactive to make sure all parties were protected. This included making arrests in order to protect and enforce the First Amendment. The discussions also included planning a way for Laffer to give his lecture safely. (Ex. 1, Pelletier depo at p. 158-163. Ex. 4, Rose depo at p. 40-41. Ex. 5, Stenger depo at p. 65-73, 82-83. Ex. 6, Faughnan depo at p. 79, 84-97.)

79. The discussions resulted in several action items to support the Laffer Event. One action item was that, because Pelletier did not believe that Laffer's representatives informed him about the planned disruption, Pelletier volunteered to meet Laffer at the airport upon his arrival to inform him of the threat so that he would have that information and choose to proceed however he wanted to. (Ex. 1, Pelletier depo at p. 161-162, 180-181, 184-186. Ex. 4, Rose depo at p. 43-44, 51. Ex. 6, Faughnan depo at p. 94-95. Ex. 27, JP6 depo ex.)

80. Another action item was to move the Laffer Event from the smaller room where it was originally scheduled to occur, to a larger multi-tiered lecture hall. (Ex. 1, Pelletier depo at p. 162-163, 173. Ex. 3, Faulkner depo at p. 95. Ex. 4, Rose depo at p. 42, 55. Ex. 6, Faughnan depo at p. 93. Ex. 34, G10, F8, and 21 depo exs.)

81. There were several reasons for moving the venue to the larger lecture hall. One reason was because it had more ingress and egress routes for Laffer and for the police if they had to arrest someone and take them out. The smaller room had one exit, which created a natural choke point and also it was located behind the seats so Laffer would have had to walk through a potentially hostile crowd. (Ex. 1, Pelletier depo at p. 162, 168-169, 187. Ex. 2, Gallagher depo at

p. 83-85. Ex. 4, Rose depo at p. 42. Ex. 6, Faughnan depo at p. 93-94. Ex. 9, Kannappan depo at p. 120-123. Ex. 11, Scagnelli depo at p. 163-164. Ex. 34, G10, F8, and 21 depo exs.)

82. The lecture hall had multiple doors including a door by the podium, thus there was a secure area for Laffer to safely enter and exit that was not generally open to the public. (Ex. 1, Pelletier depo at p. 173. Ex. 2, Gallagher depo at p. 85. Ex. 4, Rose depo at p. 42. Ex. 6, Faughnan depo at p. 93-94. Ex. 9, Kannappan depo at p. 120-123.)

83. Another reason was that the large lecture hall had more space, which gave the police a tactical advantage in controlling a protest environment. (Ex. 1, Pelletier depo at p. 187-188. Ex. 4, Rose depo at p. 42. Ex. 22, JP2 depo ex. Ex. 34, G10 depo ex.)

84. Another reason was that the small room was near many other classrooms that had classes at the same time and so protests would disrupt those classes. (Ex. 1, Pelletier depo at p. 168, 172.)

85. Another action item was, per defendant Rose's suggestion, to find an unoccupied nearby room to reserve for the protestors, as was standard practice when there was a protest, so that they could have their own designated space to protest and express their opposing views while the Laffer Event occurred. The room that University staff was able to reserve for the protestors was adjacent to Laffer's lecture hall and there was a hallway between the two rooms. (Ex. 1, Pelletier depo at p. 162-163, 172, 174, 184. Ex. 3, Faulkner depo at p. 103-104. Ex. 4, Rose depo at p. 46-49, 55. Ex. 5, Stenger depo at p. 75-76, 141-143. Ex. 6, Faughnan depo at p. 98-101. Ex. 9, Kannappan depo at p. 126-127. Ex. 14, Haynes depo at p. 164. Ex. 18, Nelson depo at p. 95. Ex. 27, JP6 depo ex. Ex. 34, G10, F8, and 21 depo exs.)

86. University PD prepared an Operational Order, which was an incident action plan outlining its plan for the Laffer Event, and had two meetings with the officers to brief them on it.

(Ex. 1, Pelletier depo at p. 164, 167, 199-200, 203-204. Ex. 3, Faulkner depo at p. 112. Ex. 29, F6 depo ex.)

87. University PD notified three other local law enforcement agencies of the Laffer Event and the potential for its disruption. (Ex. 1, Pelletier depo at p. 165-166. Ex. 3, Faulkner depo at p. 134-135.)

88. University PD also increased the number of officers to maintain order due to the disruption threat, making it an all hands on deck event such that the entire available force was assigned to work on the evening of the Laffer Event, and Pelletier believed that it would be a sufficient number of officers to secure the lecture hall and the contemplated protest. (Ex. 1, Pelletier depo at p. 176-177. Ex. 2, Gallagher depo at p. 82-83, 131. Ex. 3, Faulkner depo at p. 94-95, 108. Ex. 4, Rose depo at p. 55-56, 58-59. Ex. 9, Kannappan depo at p. 120-121, 200. Ex. 34, G10, F8, and 21 depo exs.)

89. Typically student organizations had to request and pay for police presence at their events, but the police presence for the College Republicans' Laffer Event was provided at no cost to College Republicans. (Ex. 10, Johnson depo at p. 92-93, 122.)

90. University PD put mobile video cameras in Laffer's lecture hall to record the Laffer Event in case it was needed for the prosecution of criminal activity. (Ex. 1, Pelletier depo at p. 179-180. Ex. 37, JP6 depo ex. Ex. 52, videos.)

91. On the afternoon of November 18, 2019, University PD saw a social media post by PLOT promoting the disruption of the Laffer Event. (Ex. 1, Pelletier depo at p. 156-157. Ex. 2, Gallagher depo at p. 77-78. Ex. 26, G7 depo ex.)

92. On November 18, 2019, University PD officers and University administrators spoke with YAF and College Republicans to inform them of the change in location of the lecture

hall because of security concerns for Laffer with the other room, the increased police presence because of security concerns, and the reserving of an adjacent room for the protestors to hold their own speak-out. (Ex. 9, Kannappan email at p. 115-117, 120-127, 172-173. Ex. 13, Restuccia depo at p. 259-261, 263-268.)

93. At approximately 1:40 p.m. on November 18, 2019, Pelletier met Laffer, 79 years old at the time, at the airport and talked to him for approximately one and a half minutes. Pelletier informed Laffer that he may be protested and Laffer said he had never been protested before, thanked Pelletier for the information, and moved on. (Ex. 1, Pelletier depo at p. 181-182, 194-195. Ex. 7, Laffer depo at p. 44, 47-48. Ex. 8, Butler depo at p. 9, 15, 30-34, 67. Ex. 9, Kannappan depo at p. 131-134, 203. Ex. 22, JP2 depo ex. Ex. 27, JP6 depo ex.)

94. No one had informed Laffer about the threatened protest before Pelletier told him about it. (Ex. 7, Laffer depo at p. 36-37, 43-44. Ex. 8, Butler depo at p. 57-58, 65.)

The Laffer Event

95. YAF and the College Republicans chose for the November 18, 2019 Laffer Event to be open to the public and not ticketed because they wanted to attract as many people as possible, including those who agreed with Laffer's message and those who disagreed with it. (Ex. 9, Kannappan depo at p. 119-120. Ex. 13, Restuccia depo at p. 130.)

96. College Republicans expected that protestors would shut down the lecture and so, at the lecture hall, College Republicans advised Laffer's private security team on how to get Laffer through the building and out the other side so that if he needed to leave he could get out and have a car waiting. (Ex. 14, Haynes depo at p. 67, 154-157, 167-168.)

97. In addition, in advance of the Laffer Event, YAF gave College Republicans preprinted “free speech” signs, which the College Republicans brought with them into the lecture hall to use when the protestors disrupted the event. (Ex. 2, Gallagher depo at p. 99. Ex. 9, Kannappan depo at p. 157-160, 209-210. Ex. 11, Scagnelli depo at p.179-182. Ex. 12, Kestecher depo at p. 138. Ex. 13, Restuccia depo at p. 289, 324. Ex. 14, Haynes depo at p. 188. Ex. 15, Lizak depo at p. 182-184. Ex. 19, Blakeslee depo at p. 106-109. Ex. 52, video at 7:24PM-7:26PM.)

98. At the Laffer Event on the evening of November 18, 2019, there were about nine University PD officers, including Pelletier and two other chiefs, posted inside the Laffer lecture hall and 14 officers in the surrounding hallways. (Ex. 1, Pelletier depo at p. 200-202. Ex. 18, Nelson depo at p. 109. Ex. 29, F6 depo ex.)

99. University PD set up a separate room near the Laffer lecture hall to process arrestees and there were officers posted in that room to do the processing. (Ex. 1, Pelletier depo at p. 203. Ex. 3, Faulkner depo at p. 125. Ex. 4, Rose depo at p. 59. Ex. 29, F6 depo ex.)

100. There was a chief posted in the incident command conference room at the police department to supervise via the live video feed, though this feed did not have audio. (Ex. 1, Pelletier depo at p. 179, 201, 206-207. Ex. 4, Rose depo at p. 64. Ex. 6, Faughnan depo at p. 107-110. Ex. 29, F6 depo ex.)

101. Defendant Rose and other members of the administration were also in the incident command conference room to observe the Laffer Event via the live video feed. (Ex. 4, Rose depo at p. 60, 62-64. Ex. 6, Faughnan depo at p. 107-110.)

102. As they do with every operation, University PD had a contingency plan, which in this case was posting two officers in the lecture hall loading dock in case Laffer had to be evacuated

off campus for any reason, whether it be a heart attack, protestors attacking him, or any other reason. (Ex. 1, Pelletier depo at p. 202-203. Ex. 6, Faughnan depo at p. 91. Ex. 29, F6 depo ex.)

103. There were also six officers assigned to the rest of campus. (Ex. 1, Pelletier depo at p. 200-201. Ex. 29, F6 depo ex.)

104. University PD's Investigator Gallagher was assigned to be with Laffer from the time he got out of his vehicle at the lecture hall to the time he got back in his vehicle so that Gallagher could show Laffer where to go to enter and exit. (Ex. 2, Gallagher depo at p. 89-91.)

105. University PD posted officers at every door to the lecture hall to stop access once it was filled to capacity per the fire code. (Ex. 1, Pelletier depo at p. 167-168. Ex. 3, Faulkner depo at p. 117. Ex. 9, Kannappan depo at p. 149. Ex. 22, JP2 depo ex. Ex. 52, video at 6:57PM-7:22PM.)

106. Since YAF and the College Republicans chose to have the Laffer Event be open to the public and not ticketed, University Police could not restrict who entered. (Ex. 3, Faulkner depo at p. 100.)

107. Before the Laffer Event began, Pelletier warned everyone to take a seat and clear the aisles. (Ex. 1, Pelletier depo at 213-214. Ex. 13, Restuccia depo at p. 279-280.)

108. One attendee came in with a wagon with a stereo playing, so University PD required him to take the stereo out of the lecture hall. (Ex. 1, Pelletier depo at p. 212-213.)

109. Laffer, his private security officers, his staff, and Investigator Gallagher entered the lecture hall. (Ex. 2, Gallagher depo at p. 93. Ex. 52, video at 7:21PM.)

110. College Republicans president John Restuccia told the audience that those who disagreed with Laffer should save their questions until the end when any disagreements could be voiced, and he introduced Laffer. (Ex. 1, Pelletier depo at p. 216. Ex. 4, Rose depo at p. 56. Ex. 9, Kannappan depo at p. 174. Ex. 12, Kestecher depo at p. 132. Ex. 13, Restuccia depo at p. 11, 282-

283. Ex. 19, Blakeslee depo at p. 100-101. Ex. 34, G10, F8, and 21 depo exs. Ex. 52, video at 7:21PM-7:23PM.)

111. Laffer began his lecture and within a few seconds a man in the audience stood up and started reading a speech off his mobile phone about economics, racial oppression, Trump, and the justice system. (Ex. 1, Pelletier depo at p. 216. Ex. 13, Restuccia depo at p. 323-324. Ex. 2, Gallagher depo at p. 95. Ex. 3, Faulkner depo at p. 127. Ex. 52, video at 7:23PM. Doc. No. 262, AC at ¶ 114-115.)

112. When the man stood up, Gallagher took the position next to Laffer to block access to Laffer so as to prevent anyone from getting to him. (Ex. 2, Gallagher depo at p. 96. Ex. 52, video at 7:24PM.)

113. A man from the audience gave a megaphone to the disruptor. (Ex. 1, Pelletier depo at p. 219-220. Ex. 2, Gallagher depo at p. 95. Ex. 3, Faulkner depo at p. 128-130. Ex. 52, video at 7:24PM.)

114. Pelletier walked in front of Laffer and, within about a minute, Pelletier and another chief directed officers to remove the man from the lecture hall because he was disrupting Laffer's lecture. (Ex. 1, Pelletier depo at p. 217-218. Ex. 3, Faulkner depo at p. 128-129. Ex. 52, video at 7:24PM-7:25PM.)

115. Also within about a minute of the disruptor beginning his speech, police officers moved in on him to remove him but approximately 10 to 15 audience members surrounded the disruptor to prevent the officers from reaching him and restoring the peace. (Ex. 1, Pelletier depo at p. 219-221. Ex. 2, Gallagher depo at p. 97-98. Ex. 3, Faulkner depo at p. 116-117, 128-129. Ex. 7, Laffer depo at p. 65. Ex. 9, Kannappan depo at p. 163, 209-210. Ex. 11, Scagnelli depo at p. 183-184. Ex. 12, Kestecher depo at p. 143. Ex. 13, Restuccia depo at p. 272, 288. Ex. 14, Haynes

depo at p. 187, 190. Ex. 15, Lizak depo at p. 185-186, 196-197. Ex. 16, Badalamenti depo at p. 132-133, 142-143. Ex. 18, Nelson depo at p. 117. Ex. 19, Blakeslee depo at p. 110-111. Ex. 20, Yarosh depo at p. 58-61. Ex. 52, video at 7:24PM-7:25PM.)

116. The crowd that formed the human barrier was aggressive towards the police, a man grabbed an officer's arm to try to stop the officer, the crowd was shoving and climbing on desks, and a person fell. (Ex. 3, Faulkner depo at p. 129. Ex. 28, F7 depo ex. Ex. 52, video at 7:25PM-7:26PM. Gallagher declaration.)

117. Officers ultimately broke through the human barrier, physically removed the disruptor from the lecture hall, arrested him, and charged him with disorderly conduct. (Ex. 1, Pelletier depo at p. 188, 219-220, 225-226, 229, 239. Ex. 2, Gallagher depo at p. 98, 105. Ex. 3, Faulkner depo at p. 130-134, 136, 156-157. Ex. 11, Scagnelli depo at p. 177. Ex. 13, Restuccia depo at p. 326-329. Ex. 16, Badalamenti depo at p. 126. Ex. 19, Blakeslee depo at p. 104-105. Ex. 22, JP2 depo ex. Ex. 28, F7 depo ex. Ex. 52, video at 7:25PM-7:26PM.)

118. Officers also physically took down and removed the man who handed off the megaphone, arrested him, and charged him with disorderly conduct, and at a later date University PD added a charge for obstruction of governmental administration. (Ex. 1, Pelletier depo at p. 188, 220, 225-226, 229, 237, 239. Ex. 2, Gallagher depo at p. 99, 105. Ex. 3, Faulkner depo at p. 129-131, 136, 146-147, 156-157. Ex. 22, JP2 depo ex. Ex. 28, F7 depo ex. Ex. 52, video at 7:26PM.)

119. After the disruption began and while it was still chaotic, Gallagher asked Laffer how he was doing, to which Laffer replied with words to the effect of, "Let's give it ten minutes." (Ex. 1, Pelletier depo at p. 223. Ex. 2, Gallagher depo at p. 99, 102-103. Ex. 52, video at 7:25PM. Gallagher declaration.)

120. During the disruption, College Republicans stood in front of Laffer's podium to protect him and held up the "free speech" signs that YAF previously provided and that they brought with them to the Laffer Event. (Ex. 2, Gallagher depo at p. 99. Ex. 9, Kannappan depo at p. 157-160, 209-210. Ex. 11, Scagnelli depo at p.179-182. Ex. 12, Kestecher depo at p. 138. Ex. 13, Restuccia depo at p. 289, 324. Ex. 14, Haynes depo at p. 188. Ex. 15, Lizak depo at p. 182-184. Ex. 19, Blakeslee depo at p. 106-109. Ex. 52, video at 7:24PM-7:26PM.)

121. No one from the University PD or any other Binghamton University personnel prevented the College Republicans from displaying their signs. (Ex. 8, Butler depo at p. 86. Ex. 9, Kannappan depo at p. 161. Ex. 11, Scagnelli depo at p. 181-182. Ex. 12, Kestecher depo at p. 141. Ex. 13, Restuccia depo at p. 293-294. Ex. 14, Haynes depo at p. 188. Ex. 16, Badalamenti depo at p. 130-131. Ex. 18, Nelson depo at p. 115-116. Ex. 52, video at 7:24PM-7:26PM.)

122. Gallagher feared for the safety of Laffer and everyone else in the lecture hall during the disruption. (Ex. 2, Gallagher depo at p. 103. Gallagher declaration.)

123. College Republicans also feared for their safety. (Ex. 12, Kestecher depo at p. 145. Ex. 15, Lizak depo at p. 230.)

124. YAF's representative was also concerned for Laffer's safety during the disruption. (Ex. 9, Kannappan deposition at p. 214-215.)

125. After approximately two minutes and 23 seconds into the violent disruption, Gallagher asked the College Republicans how they were feeling, to which College Republicans president John Restuccia replied with words to the effect of, "Let's get out of here." (Ex. 2, Gallagher depo at p. 99-100. Gallagher declaration. Ex. 52, video at 7:26:32PM where Restuccia (the young man in the glasses, dark blue suit coat, red tie, dark hair standing to Laffer's left at the podium) makes the motion indicating that it was time for Laffer to leave.)

126. At that point, Laffer, his staff and security officers, Restuccia and other College Republicans, and Gallagher left the building, and Laffer got in his vehicle and left campus. (Ex. 2, Gallagher depo at p. 99-100. Ex. 8, Butler depo at p. 90-92. Ex. 11, Scagnelli depo at p. 185-186. Ex. 13, Restuccia depo at p. 330-331. Ex. 18, Nelson depo at p. 119. Ex. 52, video at 7:26PM. Gallagher declaration.)

127. After the Laffer Event, University PD investigators used video footage and worked with College Republicans to identify approximately eight additional student and non-student protestors suspected of committing obstruction during the Laffer Event. (Ex. 1, Pelletier depo at p. 188-189, 230-239. Ex. 2, Gallagher depo at p. 107-113, 122-124. Ex. 3, Faulkner depo at p. 157. Ex. 14, Haynes depo at p. 84-85, 202-206. Ex. 22, JP2 depo ex. Ex. 29, F6 depo ex. Ex. 30, JP7-JP10 and HS5 depo exs. Ex. 33, G8 depo ex. Ex. 34, G10 and F8 depo exs.)

128. The investigators and Pelletier were supportive of charging them, as was the Assistant District Attorney whose perspective University PD sought on what crimes were chargeable. (Ex. 1, Pelletier depo at p. 189, 238-242. Ex. 22, JP2 depo ex. Ex. 30, JP7-JP10 and HS5 depo exs.)

129. About a week after the Laffer Event, Pelletier attended a meeting with defendants Stenger and Rose and other University administrators. (Ex. 1, Pelletier depo at p. 68-70, 239-241.)

130. At the meeting, Pelletier presented a list of the additional suspects and said that they were going to be arrested. (Ex. 1, Pelletier depo at p. 68-70, 239-241. Ex. 4, Rose depo at p. 80-86. Ex. 5, Stenger depo at p. 91, 96-97, 148.)

131. The University administrators discussed it and suggested to Pelletier that no charges be filed against anyone other than the two men who were arrested on scene at the Laffer Event.

(Ex. 1, Pelletier depo at p. 68-70, 240-241, 249-251. Ex. 4, Rose depo at p. 80-88, 115-116. Ex. 5, Stenger depo at p. 188.)

132. As a result, the University PD investigators did not arrest the additional suspects. (Ex. 1, Pelletier depo at p. 240, 254-256. Ex. 2, Gallagher depo at p. 113. Ex. 4, Rose depo at p. 85, 88.)

133. Plaintiff Rein Bey is no longer registered for classes at Binghamton University, and she is no longer the president of plaintiff College Republicans, thus she does not have standing. (Finch declaration.)

DATED: May 31, 2024

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